

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF MARYLAND

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:  
JOSEPH ROBINSON, et al., :  
:  
Plaintiffs, :  
:  
v. : Civil No. PJM 07-CV-0150  
:  
MONTGOMERY COUNTY, MD, et al., :  
:  
Defendants. :  
:

-----X

Tuesday, October 14, 2008  
Rockville, Maryland

Deposition of

JOHN G. PETERS, MBA, PH.D.,  
witness, called for examination by counsel for the defendant,  
pursuant to notice, at the Office of the County Attorney, 101  
Monroe Street, 3rd Floor, Rockville, Maryland 20850, beginning  
at 2:06 p.m., before James Chagetas, a notary public of the  
State of Maryland, when were present on behalf of the  
respective parties:

EXHIBIT

tabbles

16

1 pass. But, we don't know because there's nothing in this  
2 lesson plan that says what's minimum passing.

3 Q So, you don't know what minimum passing was?

4 A No.

5 Q And, that causes you to conclude that the training  
6 was inadequate?

7 A Well --

8 MR. SIEGEL: Objection, mischaracterizes his  
9 testimony. He's saying the lesson plan is inadequate based on  
10 what's been provided.

11 THE WITNESS: The lesson plan is totally inadequate.

12 BY MR. LEONARD:

13 Q So, you're saying that the lesson plan, in your  
14 view, is inadequate?

15 A Specifically, to your written ten question test.  
16 Let me back up a minute. There's three areas of testing that  
17 you do or you can do. One is called cognitive domain testing.  
18 Cognitive domain testing is intellectual testing. This is  
19 what high school teachers are taught when they go through  
20 educational programs. Cognitive domain testing is written  
21 testing. And, you would list under your performance  
22 objectives each area that the student is going to be tested in  
23 and what the passing score is. That's in the cognitive area.  
24 The second area of testing is called affective domain. And,  
25 affective domain generally is the personality of the student.

1 How well does the student follow directions? Does the student  
2 get angry? Does the student hurt people intentionally during  
3 training, those type of things. And, then the third area is  
4 called psychomotor domain testing. So, there's three areas of  
5 testing.

6 Now, if we don't have a subject that lends itself to  
7 psychomotor domain testing, that subject area isn't taught or  
8 tested on. For example, if I'm teaching a course let's say on  
9 criminal law, and here are the four elements of burglary, and  
10 the five elements of larceny and whatever it happens to be,  
11 there's no psychomotor domain testing there. I mean, there's  
12 nothing that you're going to go and demonstrate. So, it has  
13 to be only cognitive domain.

14 Q Wouldn't the ten question written test be one way of  
15 addressing the cognitive domain?

16 A It would be. You're right. But, I haven't seen the  
17 test questions.

18 Q You just haven't seen it?

19 A I haven't seen it. I haven't seen anything in the  
20 lesson plan that describes what those ten questions are.

21 MR. SIEGEL: For the record, they haven't been  
22 provided pursuant to any requests that the plaintiff --  
23 pursuant to any of the plaintiff's requests.

24 BY MR. LEONARD:

25 Q In item number four, which she described in her

1 deposition and I think you were referring to that portion of  
2 her deposition where they actually do a physical enactment of  
3 the skill and she rates it and gives them a certain number of  
4 points, and tallies them up, and requires that it be a 70  
5 percent rating or higher.

6 A Correct.

7 Q Wouldn't that be a method of testing psychomotor  
8 skills?

9 A Not as written.

10 Q What about as implementing? You heard how she  
11 described it.

12 A Okay, let me tell you how she implements it. On  
13 page 81 at line 15, or line 14 she was asked, what do they  
14 need to pass? And, this is the performance. At line 15 she  
15 says, 70 percent or higher. At line 17 -- or, I'm sorry, at  
16 line 16 she was asked, 70 percent of what? And, she said 100.

17 Q Didn't she say that she broke down individual  
18 skills? I mean, there's this 26 step process that they go  
19 through, and broke it down into certain critical  
20 sub-components. And, out of a particular sub-component you  
21 might get the maximum of five points or you might just three  
22 points, etc.

23 MR. SIEGEL: Objection. It assumes facts not in  
24 evidence. I don't believe that accurately --

25 MR. LEONARD: No, I'm referring to --

1 MR. SIEGEL: Let me finish my objection.

2 MR. LEONARD: Okay, I will.

3 MR. SIEGEL: I don't believe that that accurately  
4 characterizes her description of the testing. So, the  
5 hypothetical assumes facts not in evidence.

6 MR. LEONARD: I'd appreciate if you didn't make  
7 speaking objections giving your opinion of your  
8 characterization. But, I'll just --

9 BY MR. LEONARD:

10 Q I think you understand the question.

11 A Right. On page 87, the question was asked, so do  
12 they get five points for doing each of the steps correctly?  
13 Answer, yes. Then on page 88 she says, if they were to say  
14 get on your knees when going through step five they would not  
15 get full credit for step five. At line five she said they  
16 might get three instead of five. Well, that's 60 percent.  
17 That's not 70 percent.

18 Q So, she made a computational error?

19 A Well, she made the computational error because  
20 there's nothing in this performance lesson plan that says what  
21 the minimum passing score is. There's no test document that  
22 I've been able to see that lists the specific steps the  
23 student must pass and which of those steps are terminal steps.  
24 Because if you miss two of the steps that are terminal steps,  
25 the 60 percent doesn't fly. It's an automatic zero. So,

1 basically, what we have here is a document and an agency  
2 historically that says you guys just go demonstrate it. And,  
3 if I look at it, it'll be okay. And, if I don't look at it  
4 because I missed something, that's okay too. Because we have  
5 no testing. We talk about it but we have no formal testing.  
6 And, this is the kind of stuff that got agencies in trouble in  
7 the '70s and '80s primarily when female law enforcement  
8 officers were getting kicked out of recruit academies for  
9 arbitrary and capricious testing standards. And, these aren't  
10 standards that I've come up with. These are standards that  
11 are in the literature.

12 Q Well, by her account she was having them do a  
13 hands-on demonstration and evaluating them for passing or  
14 failure, correct, on the 70 percent standard?

15 A You're right. But, what's the 70 percent pass or  
16 fail based on? That's what we don't know.

17 Q And, because you don't know that you conclude that  
18 it is inadequate?

19 A Because I don't know that is because it's not in the  
20 lesson plan and that's a requirement of lesson plan  
21 development. And, I don't think this instructor had  
22 instructional development that covered that. And, these are  
23 pretty basic elements for lesson plan development.

24 Q What do you mean instructional development?

25 A In most states to teach a police subject the

1 Q And, reasonable force could be applied in any number  
2 of ways, is that correct?

3 A I mean theoretically.

4 Q It is theoretical stuff isn't it?

5 A Well, some of it's theoretical I'll give you that.  
6 But, what's not theoretical is instruction. And, if you don't  
7 teach it then it's no longer theoretical.

8 Q Aren't there almost an infinite number of types of  
9 application of force and potential injury that could occur in  
10 requiring or making a suspect who is not compliant, compliant?

11 A I don't think there's an infinite number or I should  
12 say there is an infinite number. I mean, you only get to a  
13 point. Your hypothetical is the officer by himself? Are  
14 there multiple officers? What training did the officer have?  
15 How big is the suspect? What type of noncompliance? I mean,  
16 there's a lot of variables there that you really need to fill  
17 in on.

18 Q What is the list of all of the potential injuries  
19 that could occur to a suspect if an officer uses force in  
20 order to gain compliance?

21 A For what type of force?

22 Q Well, I'm asking you. You focused in on this one.  
23 What are all the others? What should be in the lesson plan?

24 A Well, what should be in this lesson plan, and I'm  
25 only talking about prone, okay. Your hypothetical was any

1 type of force. I'm only focusing on the prone. When you push  
2 somebody forward, and this should be in the lesson plan, they  
3 could strike their head on whatever the surface is. They  
4 could hit their nose on the surface. You could injure their  
5 neck. You could injure their back. They could injure their  
6 chest. If they have their hands behind their back and you  
7 push them forward and they can't get their hands out in front,  
8 that can make the injury worse. Or, if their hands go down  
9 and you push them so hard that they can't stop like a shock  
10 absorber, that could cause it. I mean, those are the things  
11 that are in the lesson plan that you point out to police  
12 officers, particularly in this lesson plan because these are  
13 candidates. They don't know the first foggy thing about law  
14 enforcement. So, they're not going to know this stuff.  
15 They're going to know what they saw on television. Television  
16 is probably the greatest training aid people have prior to  
17 coming to the police academy.

18 Q In a prone handcuffing lesson plan what other uses  
19 of force and potential injuries should be warned of other than  
20 a push and a possible injury to the face?

21 A Well, I think back injuries, shoulder injuries,  
22 wrist injuries, finger injuries, chest injuries.

23 Q From what use of force?

24 A From pushing people forward.

25 Q What other uses of force should be addressed and



1 other injuries associated with those uses of force?

2 A Well, I guess other uses of force would be pushing  
3 them backwards or grabbing their fingers and twisting it, or  
4 going into a straight-arm takedown. I mean, a straight-arm  
5 takedown or a bar-arm takedown. It comes by various names.  
6 If you force them real fast you can break the elbow. You can  
7 dislocate the shoulder. You can snap their head forward  
8 causing a neck injury. I mean, we can spend a paramount of  
9 time if we're going to go and combine the defensive tactics  
10 portion with the prone handcuffing portion.

11 Q So, all of these things should be in the prone  
12 handcuffing --

13 A All potential injuries should be in the prone  
14 handcuffing lesson plan.

15 Q All the potential uses of force and the physical  
16 consequences on the subject should be in the prone handcuffing  
17 lesson plan?

18 A Well, not all uses of force because -- I mean, one  
19 use of force is to shoot the guy in the back. I'm not sure  
20 that should be in the prone handcuffing lesson plan. But, in  
21 your hypothetical that would be a use of force. I'm talking  
22 about use of force where the person is -- you're in that  
23 kneeling position. That's what we're really talking about  
24 here is the kneeling position. If they're already in the  
25 prone position then we have to address things such as

1 transient compression. We have to address things such as  
2 potential wrist injuries or finger injuries or shoulder  
3 injuries from bending arms or what have you.

4 Q That should be in here?

5 A That should be in here.

6 Q The possibility that in a prone handcuffing if they  
7 have to use force, if they bend the fingers that could hurt  
8 the suspect in a certain way?

9 A It could. It doesn't mean that the officer is not  
10 going to do it. It just means that the instructor has pointed  
11 out look, here's what can happen. You know, if I've got a 60-  
12 year old man on the ground and I'm going to hyper-extend his  
13 wrist and get it off the back for thumping and I bend his  
14 fingers back, I might break them. I might break all of them.  
15 I might break none of them. But, you have to tell people,  
16 look here's the potential injury. It's a warning about the  
17 technique. That's really what it is. It's a warning about  
18 the technique and some of the problems that can come from it.

19 Q And, that should be in the prone handcuffing lesson  
20 plan?

21 A That should be in that section of the lesson plan  
22 going from kneeling to prone, absolutely.

23 Q And, the possible physical effects on a suspect of  
24 doing a straight-arm bar takedown should be in the prone  
25 handcuffing lesson plan?

1           A     It's going to probably be in the defensive tactics  
2     lesson plan. But, your restraint instructors have to know  
3     what's being taught over on the defensive tactics side.  
4     Because if we're going to use that straight-arm takedown to  
5     get somebody into a prone position, he'll have to remind them  
6     look, this could cause an injury.

7           Q     But, they may be getting that training over in  
8     another block of their training?

9           A     They could be. But, it needs to be reminded here  
10    that if you're going to use this technique to put somebody  
11    down, recall from your defensive tactics training this could  
12    happen. That's why this is a systemic issue. This is not --  
13    we don't just write a lesson plan on one physical skill  
14    without referencing all the other physical skills. It doesn't  
15    make any sense to do that.

16          Q     In paragraph two of opinion number two you indicate  
17    that Officer Mazuka said that he pushed Mr. Robinson in the  
18    back with his hand and has pushed other people in a similar  
19    manner, at least, 36 times.

20          A     Right.

21          Q     Where did he say that he pushed other people in a  
22    similar manner 36 times?

23          A     I would have gotten it from his deposition I would  
24    imagine.

25          Q     Do you have it?

1           A     That's what it appeared to me. Let me get that  
2 deposition.

3           Q     It appeared to you that that was on an  
4 administrative violation?

5           A     Just give me one second, I'll find that. On page  
6 68, line 18 she was asked what's the commander's role --

7           Q     Who is she?

8           A     I'm sorry. Melanie Eberly. I'm sorry, that's my  
9 mistake. At line 18 she said the commander's role is to make  
10 findings. And, then line 19, 20 and 21 she was asked, would  
11 that be the supervisor of the officer involved in the  
12 complaint? Line 22, it's not the direct supervisor. He's in  
13 that chain of command, yes. And, then on page 69 at line 16  
14 to 18, so the policy is to give it to the commander who's in  
15 charge of the officer? Answer, yes.

16          Q     And, what's your understanding of the role of the  
17 internal affairs division and the investigations they do?

18          A     The investigator is simply a fact finder. They  
19 don't make decisions. They don't make recommendations. This  
20 whole process is --

21          Q     And, what is your understanding of who the  
22 decisionmaker is?

23          A     Well, the decisionmaker would be this commander that  
24 she's referring to initially. And, ultimately, if it's bad  
25 enough I would imagine it would go before the chief or some

1 personnel board, hearing board, something.

2 Q Is that appropriate?

3 A Of course, that's appropriate if it's something that  
4 -- well, say there's an officer who ran a red light, struck  
5 some little kid on a bicycle, those decisions normally go to  
6 the top. I mean, they should.

7 Q So, you're saying that if a complaint comes in on an  
8 officer there ought to be clandestine surveillance on him?

9 A No, I'm not saying that at all, counsel.

10 Q Okay, maybe -- I'm not trying to put words in your  
11 mouth.

12 A Not at all.

13 Q What do you mean --

14 A What I'm saying is, let's go back to the  
15 investigator's testimony. This might say it best. On page 29  
16 of Ms. Eberly's testimony -- page 29, line 5, when she went  
17 through the Department of Justice training she said they went  
18 over an early warning system for police departments. So, we  
19 have now an investigator who has gone to department sanction  
20 training that says you should have an early warning system.  
21 And, that early warning system as used throughout the country  
22 says you should have a database that if an officer pops up on  
23 a complaint of excessive force more than X times, whatever X  
24 is determined by the department -- three times in a quarter,  
25 three times in six months or whatever the department says --

1 we're going to pull all those complaints and we're going to  
2 look at them. We may not look at them for disciplinary  
3 purposes, but we want to look at them and find out is this  
4 righteous? Is this something that we should look at? And, if  
5 it's something that contradicts policy, then we maybe need to  
6 retrain the officer or we may need to redo our policy. That's  
7 how these things usually are processed. Because sometimes the  
8 actions are right and the policy is wrong.

9 Q And, where is this standard set out?

10 A International Association of Chiefs of Police has  
11 that standard.

12 Q In what?

13 A Early warning systems and there are investigative  
14 guidelines. The New Jersey attorney general's office it's a  
15 mandate in New Jersey that this type of activity take place.  
16 In administrative investigation books that are on the market,  
17 same thing. The COLIA standards say that there should be a  
18 procedure in place to detect these things. And, most of this  
19 stuff came out of LAPD Rodney King incident.

20 Q The Maryland Law Enforcement Officers Bill of Rights  
21 says, and I think you quote a predecessor of the current  
22 statute but I think the words are the same, that unless a  
23 complaint was filed within 90 days after the alleged  
24 brutality, an investigation that may lead to disciplinary  
25 action under this subtitle may not be initiated and an action

1 may not be taken. Is that correct?

2 A Correct.

3 Q And, Captain Falcinelli testified about that in his  
4 deposition, correct?

5 A Correct.

6 Q His reading of that is that the department cannot  
7 initiate an investigation that would lead to disciplinary  
8 action involving brutality or excessive use of force.

9 A Right.

10 Q Unless a complaint is filed within 90 days of the  
11 event.

12 A Correct.

13 Q Is that understanding correct?

14 A That's his understanding obviously. And, I think  
15 one of the things that you failed to mention is that the  
16 report has to be notarized. I mean, that's what I've read  
17 throughout these depositions is that the complainant has to  
18 have that report notarized. You're putting a heavy burden on  
19 people. The U.S. Department of Justice says that you take  
20 complaints even anonymously and investigate them. I  
21 understand we have a statute here that Falcinelli interprets  
22 the way he interprets it. But, if we're going to just  
23 whitewash everything and say look, it came in on the 95th day,  
24 we're not going to do anything.

25 Q But that's not what he did, is it?



1 So, the face is more than likely going to strike the surface  
2 of whatever he's on and fairly hard. If he's already  
3 handcuffed there's no reason to push him forward. You just  
4 get him up and move him to wherever you're going to go. And,  
5 if he's handcuffed at that point, that would be in the  
6 kneeling position so there was absolutely no reason to do  
7 anything else. You've accomplished the handcuffing objective.  
8 You get him up and move him and take him wherever you're going  
9 to go.

10 Q So, if I understand your testimony correctly, even  
11 if he was not handcuffed it's your opinion to a reasonable  
12 degree of professional certainty that the actions of Mazuka  
13 that day were excessive and likely to cause serious bodily  
14 injury, correct?

15 A Correct.

16 MR. LEONARD: Objection.

17 BY MR. SIEGEL:

18 Q The fact that he -- if he was, in fact, handcuffed  
19 as Mr. Robinson described, that would make it even worse?

20 A Absolutely. That's way outside training and  
21 generally accepted standards of defensive tactics or prisoner  
22 transport or treatment.

23 Q Officer Mazuka, and you reference this in your  
24 report, testified that the prone handcuffing technique that is  
25 taught is not performed on the street by officer.



1 A Correct.

2 Q Would you agree that the technique that the officers  
3 used at the scene of this incident was consistent with Officer  
4 Mazuka's statement that they're not doing it the way they're  
5 taught?

6 MR. LEONARD: Objection, leading.

7 THE WITNESS: I would, that's correct.

8 BY MR. SIEGEL:

9 Q Well, let me rephrase the question. Is the  
10 methodology that was used at the scene of the incident to the  
11 prone handcuffing technique consistent or inconsistent with  
12 the methodology which they are taught in the academy?

13 A Inconsistent.

14 Q What, if any, opinions do you have to a reasonable  
15 degree of professional certainty as to the responsibility of  
16 the supervising officer at the scene and/or the other officers  
17 for that matter to ensure that it is done the way that it is  
18 supposed to be done?

19 A Well, I touched on this a little bit earlier. You  
20 have a cover officer present who is doing a number of things,  
21 which generally is in violation of training. The cover  
22 officer does just one thing. He provides cover. Someone else  
23 should be giving directions to the suspect. The sergeant  
24 should be there taking command presence, orchestrating that,  
25 making sure everything is done. And, if the sergeant sees

1     somebody coming from some other point view or if the suspect  
2     without the person who's giving the commands or requesting  
3     help, he should stop them and say that's enough; back up.  
4     Now, depending on the circumstances usually in these types of  
5     settings hand signals are used the most between officers.  
6     It's not something that I would yell out and say to Mr.  
7     Leonard because if the court reporter was a suspect then he'd  
8     hear what was going on. So, a lot of this is done with hand  
9     communication.

10           But, if something is coming such as say an officer  
11     running up to this person without being asked to do so, there  
12     you would use a verbal command. And, the sergeant should have  
13     taken charge of that. The sergeant should have said, look,  
14     stop right there. The sergeant also should have been  
15     knowledgeable enough with the techniques that are used in this  
16     setting, especially in high risk felony stops. I mean, the  
17     sergeant made the stop. He's in command of that situation and  
18     should be throughout the whole event.

19           BY MR. SIEGEL:

20           Q     Do you -- I'm sorry --

21           A     No, I was just going to say so the sergeant is  
22     really responsible for everything that happens there.

23           Q     Do you have an opinion to a reasonable degree of  
24     professional certainty as to whether or not the sergeant, in  
25     particular Sergeant Patil's failures was a cause of the

1 incident occurring and the injuries that Mr. Robinson  
2 suffered?

3 A I do.

4 Q How so?

5 A The sergeant failed to take charge of the scene.  
6 The sergeant failed to direct what was going on. Even to the  
7 point of if someone else were giving the commands, the  
8 sergeant -- the sergeant has worked with this special group  
9 for a while. So, they should have actually done training on  
10 this. They should have practiced high risk felony stops.  
11 They should have practiced this type of event so all the team  
12 members know what's going on. Therefore, he should have taken  
13 charge of that and told people in training or in service  
14 training or wherever this specialized training they were doing  
15 took place look, here's how we're going to do it. We're not  
16 going to deviate from it. There was no reason in my opinion  
17 to push Mr. Robinson down because he said it's wet. He  
18 complied with everything the officers asked him to do up to  
19 that point.

20 If Mr. Robinson is right that he was handcuffed in  
21 the kneeling position, then there was certainly no reason to  
22 push him forward and Patil should have noted that, written it  
23 up and sent it up the chain of command. If Mr. Robinson was  
24 not handcuffed as the officers say, the same thing. There was  
25 no reason to push him forward and put other officers directly

1 in the line of fire of the cover officer. It just makes no  
2 sense. They're exposing everybody to dangers and the sergeant  
3 is in charge of that. Not only should he have stopped it  
4 then, but there should have been remedial training going on  
5 right after that to say look, what you guys did tonight was  
6 inherently dangerous and we're not going to do that anymore.

7 Q Do you have an opinion as to whether or not the  
8 actions by the other police officers on the scene was a cause  
9 of the incident occurring and the injuries suffered by Mr.  
10 Robinson?

11 MR. LEONARD: Objection; asked and answered.

12 THE WITNESS: Again, I think the other officers who  
13 were there they should have diversified their task; the cover  
14 officer is the cover officer. And, Mazuka and Wells shouldn't  
15 have just ran up there. Now, I'm not quite sure -- I mean,  
16 Wells I recall knelt on Mr. Robinson's back for handcuffing.  
17 I think that's how you do that unless it's done in a vicious  
18 manner.

19 BY MR. SIEGEL:

20 Q Assuming he wasn't already handcuffed?

21 A Right, assuming he wasn't already handcuffed.  
22 Kenwood, I think, was outside the circle, if you will. He  
23 didn't really see much. He was kind of out of that. But, the  
24 other people, yes. You communicate back and forth. Nobody  
25 asked Mazuka, based on my reading of the information, to run